



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2003

Ms. Myrna S. Reingold
Galveston County Legal Department
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454

OR2003-6087

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186778.

The Galveston County District Attorney's Office (the "district attorney") received a request for information regarding an incident involving an alleged injury to a child. You assert that some of the requested information constitutes grand jury records, which are not subject to disclosure under the Public Information Act (the "Act"). In the alternative, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your assertion that "information obtained by the District Attorney pursuant to grand jury subpoena and/or at the direction of the grand jury is in the possession of the District Attorney as agent for the grand jury and is not subject to disclosure under the provisions of the Act." This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within their actual or constructive possession are not subject to disclosure under the Act. *See* Gov't Code §§ 552.003(1)(B), .0035(a); *see also* Open Records Decision No. 513 (1988); Open Records Decision No. 398 at 2 (1983) (grand jury is part of judiciary for purposes of the Act). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. Open Records Decision No. 513 at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is applicable. *Id.* However, "the fact that information collected or prepared by the district attorney is submitted to the grand jury, when taken alone, does not mean that the information

is in the grand jury's constructive possession when the same information is also held by the district attorney." *Id.*

Based on your representation that the information submitted as Exhibits 64 through 127 was obtained pursuant to a grand jury subpoena, we agree that these exhibits are in the possession of the district attorney as agent of the grand jury and are therefore not subject to release under the Act. You also assert that Exhibits 1 and 3-14 are held by the district attorney as an agent of the grand jury. However, you do not represent that these documents were created or obtained at the request of the grand jury or pursuant to a grand jury subpoena. Therefore, to the extent these exhibits are maintained by the district attorney for or on behalf of the grand jury, they are in the custody of the district attorney as agent of the grand jury and are not subject to disclosure under the Act. To the extent that they are not so maintained, they are subject to the Act and may be withheld only if an exception under the Act is shown to apply. As we are unable to determine the extent to which these exhibits are maintained for or on behalf of the grand jury, we will also address the exceptions that you claim under the Act for these documents.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section incorporates statutory confidentiality provisions such as section 261.201(a) of the Family Code, which provides:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Having reviewed the remaining submitted information, including Exhibits 1 and 3 through 14, we find that it constitutes "files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation." You do not inform us that the investigating agency has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that the remaining submitted information is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* Accordingly, the district attorney must withhold

this information pursuant to section 552.101 of the Government Code as information made confidential by law.¹

In summary, because Exhibits 64 through 127 are held by the district attorney as agent of the grand jury, they are not subject to release under the Act. To the extent Exhibits 1 and 3 through 14 are also so held, they are likewise not subject to the Act. To the extent Exhibits 1 and 3 through 14 are not so held, the district attorney must withhold these exhibits along with the remaining submitted records pursuant to section 552.101 as information made confidential by law. As our ruling on these issues is dispositive, we need not address your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

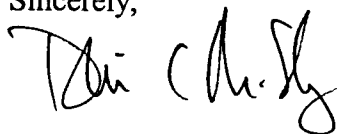
¹We note, however, that if the Texas Department of Regulatory Services has created a file on this incident, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy".

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 186778

Enc. Submitted documents

c: Ms. Angela Coon
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(w/o enclosures)